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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

JULIO CESAR VELASQUEZ,

Defendant and Appellant.

2d Crim. No. B265735
(Super. Ct. No. BA415831)
(Los Angeles County)

Julio Cesar Velasquez appeals a judgment following conviction of second degree murder with a finding that he personally used a deadly weapon during commission of the crime. (Pen. Code, §§ 187, subd. (a), 189, 12022, subd. (b)(1).)¹ We affirm.

¹ All statutory references are to the Penal Code unless stated otherwise.

FACTUAL AND PROCEDURAL HISTORY

In the morning of September 2, 2013, Velasquez stabbed Orlando Tobar during an argument regarding the return of Velasquez's cellular telephone. The two-inch knife wound severed veins in Tobar's neck; despite emergency medical treatment, he died from hemorrhaging.

Velasquez and Tobar became acquainted that morning. Shortly before 6:00 a.m., they attempted to purchase alcohol at a convenience store on Normandie Avenue in Los Angeles. The store clerk refused to sell them alcohol at that time of the morning. Tobar and Velasquez then walked across the street and sat on building steps. Tobar suggested that they visit his friends in Hollywood. The store clerk later saw Velasquez pass a telephone to Tobar, who arranged for a taxi cab to drive them to Hollywood.

Around 6:00 a.m., Tobar entered the lobby of a hotel on North Highland Avenue in Hollywood and asked for the room number of his friends. He carried a cellular telephone. When the desk clerk did not provide the information, Tobar walked upstairs to Room 207. Tobar's friend Elizabeth and two men were inside the room.

A few minutes later, Velasquez entered the hotel and asked the desk clerk regarding Tobar's whereabouts. When she

did not affirmatively respond, Velasquez left the lobby and entered the stairwell. He appeared impatient and annoyed.

Through surveillance cameras, the desk clerk saw Velasquez on the second floor of the hotel. The clerk then asked Carlos Garcia, the hotel custodian, to approach Velasquez.

Velasquez went to Room 207, knocked on the door, and demanded his telephone. Tobar advised his friends not to open the door, stating: "That's some weirdo I picked up at the gas station." Soon, Velasquez stopped knocking at Room 207 and walked along the hallway knocking on other doors. Garcia approached Velasquez and asked that he not disturb the hotel guests, but Velasquez continued to knock on doors.

Velasquez then returned to Room 207 and demanded that the occupants open the door. Tobar opened the door, Velasquez stepped with one foot inside the room, and the two men argued. Velasquez demanded the return of his telephone and Tobar insisted the telephone was in the taxi cab. As the men argued, they pushed each other. Velasquez also demanded that Tobar accompany him to find the telephone.

Garcia requested that the two men lower their voices or go outside. Velasquez pulled a knife from his pocket, pointed it at Garcia, and advised him not to become involved. One of Tobar's friends inside Room 207 also saw the knife in Velasquez's hand. Garcia stepped away, but continued to observe the men.

He also contacted the desk clerk and suggested that she telephone for police assistance.

Garcia then walked closer to Room 207 and saw Velasquez's hand holding the knife in his pocket. Tobar's hands were by his side and he was not holding a weapon. Garcia asked the men to calm down. Velasquez stated: "I'm not escorting myself out until I get my phone."

Tobar then left the hotel room and he and Velasquez walked down the stairwell toward the hotel exit on Highland Avenue. Garcia followed. When Tobar and Velasquez reached the sidewalk, Velasquez stabbed Tobar in the neck. Garcia saw Velasquez raise his right arm and stab Tobar. Garcia entered the lobby and asked the desk clerk to telephone for assistance. Tobar entered the lobby, held his neck, and stated: "I'm bleeding. Help me." The desk clerk telephoned for police and medical assistance and assisted Tobar with towels for his wound.

Motorist Zach Lorenz drove by the hotel and saw Velasquez running away and Tobar standing on the sidewalk, bleeding from a neck wound. When Lorenz stopped his vehicle, Tobar stated: "You gotta help me. I've been stabbed in the throat." Tobar also identified the man fleeing as the man who stabbed him.

Lorenz then pursued Velasquez and telephoned for police assistance as he drove. Lorenz shouted for Velasquez to

stop and stated he was speaking with the police dispatcher. Velasquez looked at Lorenz but continued running. At one point, Velasquez paused near bushes before continuing to run. A police vehicle quickly arrived and pursued Velasquez. Other police officers joined in the pursuit and they apprehended Velasquez underneath a freeway overpass. Lorenz soon arrived and identified Velasquez as the man he had pursued. By this time, Velasquez had turned his black shirt inside out to hide distinctive white lettering on the shirt front.

Paramedics arrived to treat Tobar who was bleeding profusely. A police officer saw a folding knife in the closed position clipped to Tobar's right pocket. Later, an officer collecting evidence found a glass pipe in the front pocket of Tobar's shirt. Post-mortem toxicology tests revealed the presence of methamphetamine in Tobar's blood. Expert witness Doctor Frank Sheridan opined that Tobar consumed methamphetamine shortly before the stabbing. Sheridan could not opine specifically whether Tobar's use of methamphetamine made him aggressive.

A search of the bushes where Velasquez had stood revealed a partially open folding knife with bloodstains. Later DNA analysis confirmed that the bloodstains were Tobar's.

Hotel surveillance cameras recorded Tobar and Velasquez entering and leaving the hotel and walking along the

second floor hallway. The prosecutor presented files from the video recordings into evidence at trial.

At trial, Velasquez testified that he met Tobar, a stranger, as he walked home from a party during the early morning of September 2, 2013. Following an unsuccessful attempt to purchase alcohol at a convenience store, the two men decided to visit Tobar's friends in Hollywood. Tobar used Velasquez's cellular telephone to text message and telephone for a taxi cab. When the cab arrived at the hotel, Tobar left the cab while speaking on Velasquez's telephone. Tobar asked Velasquez to wait until his return. When Tobar didn't return, Velasquez went to the hotel lobby and, after a conversation with the desk clerk, walked upstairs to the second floor rooms. He knocked on Room 207, heard Tobar's voice, and demanded his telephone.

When Tobar opened the door, he appeared angry and ordered Velasquez to leave. Velasquez denied brandishing a knife at the hotel custodian. He admitted that he was angry and argued with Tobar regarding the telephone. Velasquez stated that Tobar threatened him as they walked downstairs. When they discovered that the taxi cab driver had driven away, Tobar repeatedly threatened to "fuck [Velasquez's] ass up" and "kill [his] ass right now." Tobar frightened Velasquez because Tobar was bigger and older.

Velasquez testified that he swung his knife at Tobar in self-defense after Tobar pushed and grabbed him. Velasquez stated: “I swunged because when he swunged me, I lost balance. . . . I was just aiming at anything. I was trying to defend myself.” Velasquez stated that he panicked and ran when he saw Tobar bleeding. He did not recall turning his black shirt with the letters “CALI“ inside-out and wearing it backwards.

Velasquez’s Police Interview

Following advice and waiver of his rights pursuant to *Miranda v. Arizona* (1966) 384 U.S. 436, Velasquez spoke with Los Angeles police detectives. Initially, Velasquez denied involvement in the stabbing. Later, he admitted “crack[ing]” Tobar with a knife, just “to hit” him in the head and recover his telephone. Velasquez also stated that he regretted the crime. At trial, the prosecutor played a portion of the recorded interview. The trial court excluded other portions of the interview, including Velasquez’s remorseful statements, as irrelevant.

Conviction and Sentencing

The jury convicted Velasquez of second degree murder and found that he personally used a deadly weapon during commission of the crime. (§§ 187, subd. (a), 189, 12022, subd. (b)(1).) The trial court sentenced him to a prison term of 16 years to life, consisting of 15 years to life for the murder conviction and one year for the personal weapon use

enhancement. The court imposed a \$300 restitution fine, a \$300 parole revocation restitution fine (suspended), a \$40 court security fee, and a \$30 criminal conviction assessment; ordered \$5,000 victim restitution; and awarded Velasquez 659 days of presentence custody credit. (§§ 1202.4, subd. (b), 1202.45, 1465.8, subd. (a); Gov. Code, § 70373.)

Velasquez appeals and contends that the trial court abused its discretion by excluding the police interview statements reflecting his remorse.

*DISCUSSION*²

Velasquez argues that section 356 permits evidence of his entire police interview to complete, explain, or clarify the portions presented by the prosecutor. He claims that the redacted portions of the interview concern the lack of intent to kill and his mental state at the time he stabbed Tobar, e.g., he asked about Tobar and became distraught when he learned Tobar had died (“Oh man that's it. My life is over.”). Velasquez asserts that the trial court's exclusion of the entire interview limited his right to present a defense and denied him due process of law and a jury trial pursuant to the United States and California Constitutions. (U.S. Const., 5th, 6th & 14th Amends.; Cal.

² All statutory references hereafter are to the Evidence Code.

Const., art. I, § 15.) He adds that the error is prejudicial pursuant to any standard of review.

Section 356 provides: “Where part of an act, declaration, conversation, or writing is given in evidence by one party, the whole on the same subject may be inquired into by an adverse party.” The purpose of section 356 is to prevent use of selected portions of a conversation, act, or writing, so as to create a misleading impression of a subject. (*People v. Chism* (2014) 58 Cal.4th 1266, 1324; *People v. Vines* (2011) 51 Cal.4th 830, 861.)

Application of section 356, sometimes referred to as the “rule of completeness,” requires that the two portions of the statement, conversation, or act be “on the same subject.” (*People v. Vines, supra*, 51 Cal.4th 830, 861.) The trial court should not draw narrow lines around the subject of inquiry, however. (*Ibid.*; *People v. Hamilton* (1989) 48 Cal.3d 1142, 1174.) Thus, if a party's admissions have been introduced into evidence, he may show other portions of the same interview or conversation, although they may be self-serving, that have some bearing or connection to the portions already in evidence. (*People v. Arias* (1996) 13 Cal.4th 92, 156.) We review the court's determination whether evidence is admissible pursuant to section 356 for an abuse of discretion. (*People v. Pride* (1992) 3 Cal.4th 195, 235.)

The trial court did not abuse its discretion by precluding Velasquez's emotional statements of regret or remorse

for having stabbed and killed Tobar because the statements were unrelated to the portions of the interview presented at trial. At trial, the interview statements concerned Velasquez's initial denial of involvement in or knowledge of the incident, and, finally, his admission that he “crack[ed]” Tobar with the knife. The portions of the interview presented to the jury were not misleading in view of the entire interview; the excluded statements had no bearing or connection to the admitted portions. Moreover, the precluded statements were irrelevant to Velasquez's state of mind at the time he committed the crime. (*People v. Pearson* (2013) 56 Cal.4th 393, 460-461 [defendant failed to demonstrate that his “expressions of remorse during the police interview were relevant to his state of mind at the time of the murders”].)

Velasquez's statements more concerned his own plight than remorse for the victim. The statements were made near the end of the police interview after the detectives informed him that he would be charged with homicide. As a general rule, application of the ordinary rules of evidence, in this case section 356, does not impair a defendant's due process right to present a defense. (*People v. Lucas* (2014) 60 Cal.4th 153, 270; overruled on other grounds by *People v. Romero and Self* (2015) 62 Cal.4th 1, 53, fn. 19; *People v. Gonzales* (2012) 54 Cal.4th 1234, 1258-1259.) In any event, Velasquez testified at trial, presented a

defense of self-defense, and denied that he intended to kill Tobar.
(*People v. Gurule* (2002) 28 Cal.4th 557, 605 [defendant “free to
present [self-serving hearsay] by taking the stand himself”].)

The judgment is affirmed.

NOT TO BE PUBLISHED.

GILBERT, P. J.

We concur:

YEGAN, J.

PERREN, J.

Laura F. Priver, Judge
Superior Court County of Los Angeles

Steven Schorr, under appointment by the Court of
Appeal, for Defendant and Appellant.

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